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IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Jeffrey D. Meyer et al.

Confirmation No.: 3122

Application No.: 09/560,509

Examiner: Michael Delgado

Filing Date: April 27, 2000

Group Art Unit: 2144

Title: INTERNET USAGE DATA RECORDING SYSTEM AND METHOD WITH CONFIGURABLE
DATA COLLECTOR SYSTEM

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TRANSMITTAL OF REPLY BRIEF

Sir:

Transmitted herewith in **triplicate** is the Reply Brief with respect to the Examiner's Answer mailed on June 16, 2004. This Reply Brief is being filed pursuant to 37 CFR 1.193(b) within two months of the date of the Examiner's Answer.

(Note: Extensions of time are not allowed under 37 CFR 1.136(a))

(Note: Failure to file a Reply Brief will result in dismissal of the Appeal as to the claims made subject to an expressly stated new grounds of rejection.)

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Typed Name: Steven E. Dicke

Signature: Steven E. Dicke

Respectfully submitted,

Jeffrey D. Meyer et al.

By Steven E. Dicke

Steven E. Dicke

Attorney/Agent for Applicant(s)

Reg. No. 38,431

Date: August 13, 2004

Telephone No.: (612) 573-2002



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Jeffrey D. Meyer et al.	Examiner:	Michael Delgado
Serial No.:	09/560,509	Group Art Unit:	2143
Filed:	April 27, 2000	Docket No.:	10002145-1
Title:	INTERNET USAGE DATA RECORDING SYSTEM AND METHOD WITH CONFIGURABLE DATA COLLECTOR SYSTEM		

**APPELLANTS' REPLY BRIEF TO EXAMINER'S ANSWER TO THE
BOARD OF PATENT APPEALS AND INTERFERENCES**

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Dear Sir/Madam:

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Appellant's Reply Brief

This Reply Brief to Examiner's Answer is presented in response to the Examiner's Answer mailed July 16, 2004, and in support of the Notice of Appeal filed on February 13, 2004, from the final rejection dated November 13, 2003, and the Advisory Action dated February 6, 2004, of the Examiner rejecting claims 1, 2, 4-14, 16-18 and 20-31 of the above identified application. Twenty-eight claims remain for consideration.

The Reply Brief to Examiner's Answer is filed in triplicate. The U.S. Patent and Trademark Office is hereby authorized the Charge Deposit Account No. 08-2025 at any time during the pendency of this application. Please charge any fees required or credit any overpayment to Deposit Account 08-2025 pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees to Deposit Account 08-2025 under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Appellant respectfully requests reversal of the Examiner's rejection of pending claims 1, 2, 4-14, 16-18 and 20-31.

Argument

On page 11 of the Examiner's Answer, the Examiner provides a separate "Response to Argument Filed April 16, 2004". This Reply Brief directly responds to each of the Examiner's Replies to Argument I, II, IV and V. Appellant submits that the Examiner concedes that Bullard does not teach a configuration server in

combination with configurable collector. Further, Appellant submits that the Examiner has mischaracterized Appellant's claimed invention in the Response to Argument, and submits that the Examiner's rejections are not supported by the cited reference Bullard.

Section 1. Examiner's Reply to Argument I: The Rejection of claims 1,2 and 4-13 under 35 U.S.C. 102(e).

The Examiner concedes that Bullard does not disclose a configuration server in combination with a configurable collector.

The Examiner concedes that Bullard does not disclose a configuration server in combination with a configurable collector as claimed in independent claim 1. For at least this reason, the rejection of claim 1 under 35 U.S.C. § 102(e) should be withdrawn.

On page 12 of the Examiner's Answer, the Examiner states Appellant's argument in Item d as "Bullard does not teach the configuration server." **Appellant claims a configuration server in communication with the encapsulator, the aggregator and the data storage system, wherein the configuration server stores configuration data for the encapsulator, the aggregator, and the data storage system that determines whether the collector operates as a network data collector or a correlator collector.** The Examiner states that "prior art teaches about a configuration file that is used to configure a flow data collector" but does not show any support in the Bullard specification for the statement. (See Examiner's Answer, p. 12, paragraph 1).

The Examiner **concedes** that Bullard does not teach a configuration server that stores configuration data for the encapsulator, the aggregator, and the data storage system that determines whether the collector operates as a network data collector or a correlator collector. **The Examiner specifically admits "in the prior art, the function of data collector and correlator collector exist together and the system does not allow the option of choosing one function over another."** [Emphasis

Appellants' Reply Brief to Examiner's Answer to the Board of Patent Appeals and Interferences

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Added]. Then, the Examiner simply concludes "the adjustable feature of Applicant's invention is not considered to be patentable over the prior art being that both features are available in the prior art." See Examiner's Answer, page 12, paragraph 5.

Appellant submits that such a conclusion is neither justified nor supported by the law.

Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. Again, Appellant claims a configuration server in communication with the encapsulator, the aggregator, and the data storage system, wherein the configuration server stores configuration data for the encapsulator, the aggregator, and the data storage system that determines whether the collector operates as a network data collector or a correlator collector. The Examiner has admitted that the prior art Bullard does not teach a configuration server as claimed by Appellant that stores configuration data that determines whether the collector operates as a network data collector or a correlator collector. Appellant submits that based on the Examiner's admission alone the Examiner's rejection should be withdrawn.

The Examiner further states that "prior art discloses a service management loop that includes a service provisioning application that produces a configuration file. The act of producing a configuration file that is sent over a network to configure a network element (include Flow Data Collect), in itself, constitutes a service, which is consistent with the function of a server (col. 32, lines 30-45)." Again, the "policy server" disclosed by Bullard is not a configuration server as claimed by Appellant. The policy server is disclosed as specifying a level of service for the network based on an ISP service cut agreement or contract. Bullard recites a service management loop, including a template that is fed into a service provision application that produces a configuration file sent out to the network specifying a level of service for the network (column 32, lines 28-65). Again, Bullard fails to disclose a configuration server that determines whether the collector operates as a data collector or a correlator collector as claimed by Appellant in independent claim 1.

The Examiner has mischaracterized Appellant's Appeal Brief argument in response to the Examiner's rejection of independent claim 1.

Independent claim 1 recites a network usage recording system comprising **a collector including an encapsulator, an aggregator and a data storage system, and a configuration server in communication with the encapsulator, the aggregator and the data storage system.** At page 11, items a., b. and c. of the Examiner's Answer, the Examiner has mischaracterized Appellant's Appeal Brief argument in response to the Examiner's rejection of independent claim 1.

In particular, the Examiner mischaracterizes Appellant's argument as asserting that "a. Bullard does not teach the Encapsulator; b. Bullard does not teach the Aggregator; c. Bullard does not teach the Data storage system." The Examiner failed to include the claimed recitation of **a collector including** an encapsulator, an aggregator and a data storage system, in communication with the claimed configuration server. Further, the Examiner fails to properly show support for this claimed recitation in Bullard.

Bullard discloses a system for enhancement of network accounting records. The system includes a data collector layer that is a distributed layer of individual data collectors 18. The data collectors 18 collect raw accounting information and convert data into normalized records referred to as network accounting records (NARs). Each of the data collectors forward network accounting records to a flow aggregation processor 60 (FAP), a central collection point for all network accounting records produced from various data collectors 18 in the data collection layer 18. The flow aggregation processor 60 aggregates and/or enhances record data across the network devices to produce summary NARs' (See Bullard, column 4, lines 1-26 and Fig. 1), (column 18, lines 39-49).

The flow aggregation processor 60, referred to by the Examiner as FAP, is a centralized flow aggregation processor that is separate from the data collectors. The Examiner states "the prior art disclosed the aggregation of metrics values (standard data) to create new NARs that are stored for some aggregated period (temporary

storage) **prior to being released to a FAP**" (col. 21, line 50-65) [Emphasis Added]. The Examiner has reached a conclusion not supported by Bullard. Bullard at col. 21, line 50-65 discusses aggregation of metric values at the flow aggregation processor and states nothing about the aggregation of metric values to create new NARs that are stored for some aggregated period prior to being released to the FAP. For convenience, this section of Bullard is reproduced below:

It also then combines the relevant metric values together via summation or logical operations (e.g., ORing, XORing, ANDing). Once the aggregation is complete, the FAP holds the resulting aggregated NAR 552. As the FAP receives additional NARs, the aggregator continues to sum and perform these logical operations on these metric values for some aggregation period. The duration of the aggregation period may be in the order of 60 seconds to a week, or however long the FAP is configured to aggregate these records. The termination of that period can be a time-based or event-based. Once an event that terminates the time period occurs or an aggregation timer expires, the aggregated NARs held in the aggregation store are released for output by the FAP.

Bullard, at col. 21, lines 50-65, refers to Figure 20 and is a discussion of the aggregation process that occurs at the flow aggregation processor, where the element numbers correspond to the flow aggregation processor elements illustrated in Figure 16. Bullard, at col. 21, lines 50-65 does not disclose the aggregation of metric values **prior** to being released to a FAP as stated by the Examiner.

Similarly, the data storage system referred to by the Examiner at item c. is located at the Bullard flow aggregation processor, and not at the same collector as the encapsulator and aggregator as claimed by Appellant. The Examiner states "prior art teaches about an aggregator store (Fig. 20, 408)(col. 21, lines 25-30) that temporary store NARs in conjunction with the aggregating process." Bullard at column 21, lines 25-30 recites:

Therefore, the enhancement function can be used to insert the work group label into the enhanced NAR 2 (already enhanced for user name) to produce a twice-enhanced NAR 2 542. If the now twice-enhanced record 542 is to be aggregated, it is held in the aggregation store 408 (Fig. 16) for some time period T until other NARs are received for potential aggregation.

As illustrated in Bullard, Figure 16, aggregation store 408 is part of flow aggregation processor 60 and not a collector including an encapsulator, aggregator, and data store as claimed by Appellant.

In summary, the Appellant's argument is not simply that Bullard does not teach an encapsulator, an aggregator or a data storage system as responded to by the Examiner. Rather, Appellant asserts that Bullard does not teach a collector including an encapsulator, an aggregator and a data storage system, in communication with the configuration server as claimed by Appellant in independent claim 1.

In view of the above, in addition to those reasons set forth in the Appellant's Appeal Brief, Appellant respectfully submits that the above rejection of independent claim 1, and the claims depending therefrom under 35 U.S.C. § 102(e) should be withdrawn.

Section 2. Reply to Argument II: The rejection of claims 14 and 16 under 35 U.S.C. § 102(e)

On page 13 of the Examiner's Answer, the Examiner summarizes Appellant's argument in response to the rejection of claims 14 and 16 under 35 U.S.C. § 102(e) as "item e. Bullard does not teach the collector shell; and f. Bullard does not teach a query manager." However, Appellant does not merely argue that Bullard fails to disclose a collector shell and a query manager. Appellant argues that Bullard fails to disclose **a collector system including a collector shell, query manager, and encapsulator, an aggregator and a data storage system, and a configuration server in communication with the encapsulator, the aggregator, and the data storage system, wherein the configuration server stores configuration data for the collector that determines whether the collector system operates as a network data collector or a correlator collector.**

In further reference to item e, the collector shell, the Examiner states "this is equivalent to a boot strapping process, which occurs in all computers at startup... the boot code as in the case of the collector shell acts as a go between (interface) in the transfer of configuration data from the software storage (configuration server) to the

operating memory (local store) (column 15, line 65-column 15, line 20)." Again, Bullard fails to disclose a collector system including a collector shell, ...in combination with a configuration server that stores configuration data such that the collector can operate as a network data collector or a correlator collector. As claimed, the same architecture can be used for each type of collector, regardless of whether it operates as a data collector or a correlator collector. Bullard fails to teach different types of collectors, a data collector or a correlator collector, as claimed by Appellant.

In reference to item f., the query manager, the Examiner states that an SQL database management system is disclosed which provides the interface function (by using SQL calls) of moving NARs from FDC "collectors" to FAP "aggregator". See Examiner's Answer, page 14, paragraph 1. Again, Appellant claims a collector system including a query manager ... in combination with a configuration server that stores configuration data for the collector that determines whether the collector system operates as a network data collector or a correlator collector.

In view of the above, in addition to those reasons set forth in the Appellant's Appeal Brief, Appellant submits that the rejection of claims 14 and 16 under 35 U.S.C. § 102(e) should also be withdrawn.

Section 3. Reply to Argument III: The rejection of claim 17, 18 and 20-23 under 35 U.S.C. § 102(e)

In the Examiner's Answer, the Examiner submits that the Response is the same as argument I, which covers the system while argument III covers the method. In view of Appellant's response under Section 1 above, in addition to those reasons set forth in the Appellant's Appeal Brief, Appellant submits that the rejection of claims 17, 18 and 20-23 under 35 U.S.C. § 102(e) also be withdrawn.

Section 4. Reply to Argument IV: The rejection of claim 24 under 35 U.S.C. § 102(e)

In the Examiner's Answer, the Examiner stated "the response is the same as argument I, which covers the system while argument IV covers the computer medium

that contain the instruction for operation (this is the local store that was discussed in argument II)." In view of Appellant's response under Section 1 above, in addition to those reasons set forth in the Appellant's Appeal Brief, Appellant submits that the rejection of claim 24 under 35 U.S.C. § 102(e) should also be withdrawn.

Section 5. Reply to Argument V: The rejection of claims 25-31 under 35 U.S.C. 102(e)

In the Examiner's Answer on page 14, the Examiner states:

In response to the plurality of configuration collectors:

Prior art teaches about using a plurality of collector type (FAP and FDC) (Fig. 21) (col. 22, lines 10-25). Data collectors are map 2 (FDC, 562) (A-E) and correlate collector (FAP, 564a, 564b). The argument as to the configuration server was discussed in argument I. For the above reasons, it is believed that the rejections should be sustained.

Independent claim 25 recites a plurality of configurable collectors, where each collector is configurable to operate as one of a plurality of collector types, the collector types including a data collector and a correlator collector, and a configuration server in communication with each configurable collector, where the configuration server stores configuration data for each configurable collector that determines the collector type for each collector, and once the configuration data is transferred to each configurable collector, each configurable collector becomes the collector type associated with the configuration data. In reference to Section 1 discussed above, Bullard fails to disclose a configuration server as claimed by Appellant. Further, nothing in Bullard teaches **a plurality of configurable collectors, where each collector is configurable to operate as one of a plurality of collector types, ...where the configuration server stores configuration data for each configurable collector that determines a collector type for each collector.** In reference to Section 1 above, the Examiner conceded that Bullard fails to teach a configurable collector, stating that in Bullard "the function of data collector and correlator collector exist together and the system does not allow the option of choosing one function over another." See Examiner's Answer, page 12, paragraph 5.

In view of the above, in addition to those reasons set forth in the Appellant's Appeal Brief, Appellant requests that the rejection of independent claim 25 and the claims depending therefrom under 35 U.S.C. § 102(e) be withdrawn.

Conclusion

For the reasons discussed above, in addition to those reasons set forth in the Appellant's Appeal Brief, the cited art neither anticipates nor renders the claimed invention obvious, and therefore the claimed invention does patentably distinguish over the cited art. Appellant submits that the rejections to pending claims 1, 2, 4-14, 16-18 and 20-31 under 35 U.S.C. § 102 must be withdrawn and that those claims be allowed. Therefore, Appellant respectfully requests reversal of the Examiner's rejection of pending claims 1, 2, 4-14, 16-18 and 20-31 and find all pending claims allowable.

Any inquiry regarding this Reply Brief to Examiner's Answer to the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office should be directed to either Steven E. Dicke at Telephone No. (612) 573-2002, Facsimile No. (612) 573-2005 or Philip S. Lyren, Esq. at Telephone No. (281) 514-8236, Facsimile No. (281) 514-8332. In addition, all correspondence should continue to be directed to the following address:

Hewlett-Packard Company
Intellectual Property Administration
P.O. Box 272400
3404 E. Harmony Road, M/S 35
Fort Collins, Colorado 80527-2400

Appellants' Reply Brief to Examiner's Answer to the Board of Patent Appeals and Interferences

Appellant: Jeffrey D. Meyer et al.

Serial No.: 09/560,509

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CONFIGURABLE DATA COLLECTOR

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Respectfully submitted,

Jeffrey D. Meyer et al.

By their attorneys,

DICKE, BILLIG & CZAJA, PLLC

Fifth Street Towers

100 South Fifth Street, Suite 2250

Minneapolis, MN 55402

Telephone: (612) 573-2000

Facsimile: (612) 573-2005

Date: August 13, 2004
SED:jan

Steven E. Dicke
Steven E. Dicke
Reg. No. 38,431

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Box AF, Assistant Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 13 day of August, 2004.

By Steven E. Dicke
Name: Steven E. Dicke